

Adams, Hope

From: Wessinger-Hill, JoAnne
Sent: Tuesday, September 7, 2021 6:11 PM
To: Hall, Roger; Grube-Lybarker, Carri; John J. Pringle, Jr.; Heather Smith; Heather Smith; fellerbe@robinsongray.com; fellerbe@robinsongray.com; Mustian, Ben
Cc: PSC_Contact
Subject: FW: [External] 2020-263-E
Attachments: 2020-263-E Notice Regarding Legally Enforceable Obligation Election.pdf; 2020-263-E Petition for Rehearing or Reconsideration.pdf

Thank you, Attorney Pringle, for the courtesy copy of the filing. It is appreciated.

A copy of this email and attachments will be placed in the DMS in accordance with Commission policy.

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From: Jack Pringle <Jack.Pringle@arlaw.com>

Sent: Tuesday, September 7, 2021 4:24 PM

To: Duke, Daphne <daphne.duke@psc.sc.gov>; Wessinger-Hill, JoAnne <JoAnne.Hill@psc.sc.gov>

Cc: Mustian, Ben <BMustian@ors.sc.gov>; Hall, Roger <rhall@scconsumer.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Frank R. Ellerbe III <fellerbe@robinsongray.com>; Heather Smith <Heather.Smith@duke-energy.com>; Breitschwerdt, E. Brett <bbreitschwerdt@mcguirewoods.com>; DeMarco, Tracy S. <TDeMarco@mcguirewoods.com>; DeGrandis, Bill D. <billdegrandis@paulhastings.com>; McGrath, Jenna <jennamcgrath@paulhastings.com>

Subject: [External] 2020-263-E

The attached were filed on behalf of Cherokee County Cogeneration Partners, LLC in the above-referenced Docket.

Jack P.



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BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-263-E

Cherokee County Cogeneration Partners, LLC)	
)	
Complainant,)	
)	
v.)	NOTICE REGARDING
)	LEGALLY ENFORCEABLE
Duke Energy Progress, LLC and Duke)	OBLIGATION ELECTION
Energy Carolinas, LLC,)	
)	
Respondents.)	

In this Commission’s Order No. 2021-604 issued on August 27, 2021 (the “Order”) in the above-referenced Docket, the Commission required Cherokee to notify DEC and this Commission, within seven (7) business days, whether “Cherokee chooses the avoided cost rate, using the methodology approved by the Commission, as of the date Cherokee established the LEO, or the date of delivery following its 2012 PPA term, January 1, 2021.” (Ordering Provision No. 5). Accordingly, Cherokee chooses the calculation of the avoided cost rate as of the date of the LEO, *i.e.*, that rate which is “based upon the avoided cost rate methodology determined and approved by the Commission and existing on September 17, 2018....” (Ordering Provision No. 3).

As set forth in the concurrently filed Cherokee Petition for Rehearing or Reconsideration, Cherokee requests that this Commission clarify that such avoided cost is \$110 per kW-year, inclusive of start up costs (\$90 per kW-year with start up costs paid separately), consistent with Mr. Strunk’s testimony—the only avoided cost rate developed in accordance with this Commission’s orders and rules in effect at the time Cherokee established the LEO. Cherokee further notes that DEC’s revised rates in its Late Filed Exhibit for October 2018 (revised to reflect a 10 year tolling agreement), actually yield a higher rate of \$119 kW-year, exclusive of start up costs, as

recalculated by Cherokee witness Strunk to correct certain errors and flaws. *See Cherokee Comments on Late Filed Exhibit, p. 2 (August 12, 2021).*

Respectfully submitted,

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September 7, 2021

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-263-E

Cherokee County Cogeneration Partners, LLC)	
)	
Complainant,)	
)	
v.)	PETITION FOR REHEARING OR
)	RECONSIDERATION
Duke Energy Progress, LLC and Duke)	
Energy Carolinas, LLC,)	
)	
Respondents.)	

Cherokee County Cogeneration Partners, LLC (“Cherokee”), pursuant to S.C. Code Ann. 58-27-2150, S.C. Code Ann. Regs. 103-825, and S.C. Code Ann. Regs. 103-854, respectfully moves the Public Service Commission of South Carolina (“Commission”) to rehear or reconsider certain aspects of its Order No. 2021-604 issued on August 27, 2021 (the “Order”) in the above-referenced Docket.

I. Background

Cherokee appreciates the “significant challenge to resolve the issues in this docket” (Order, p. 31), particularly given the expeditious review of the issues and prompt issuance of the Order. Cherokee submits this limited Petition because the Commission addressed all but one of the issues that the parties placed before the Commission. As set out in Cherokee’s Post-Hearing Memorandum of Law (Page 1), these issues were: 1) Did Cherokee establish a legally enforceable obligation (“LEO”) with Duke Energy Carolinas, LLC (“DEC”) in September of 2018, therefore entitling Cherokee to DEC’s avoided cost rates for energy and capacity?; and 2) What are DEC’s avoided costs, including energy and capacity components, to which Cherokee is

entitled pursuant to PURPA?¹

Accordingly, the Order determined that “Cherokee established a legally enforceable obligation (LEO) with Duke Energy Carolinas on September 17, 2018, to sell its power at Duke Energy Carolinas’ avoided cost rate approved and determined by the Commission which existed on the date of the obligation.” (Order, Finding of Fact No. 1). Similarly, the Order recognized that a “10-year dispatchable tolling agreement structure is appropriate . . .” (Order, Finding of Fact No. 7).

As a result, the only remaining issue before the Commission is a determination of “DEC’s avoided costs, including energy and capacity components, to which Cherokee is entitled pursuant to PURPA?”

II. Standard of Review

Pursuant to S.C. Code Ann. § 58-27-2150, a party may apply within ten (10) days of service of the Order to the Commission for a rehearing in respect to any matter determined in the proceeding. Under S.C. Code Ann. Reg. 103-825(4):

A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:

- (a) The factual and legal issues forming the basis for the petition;
- (b) The alleged error or errors in the Commission order; and
- (c) The statutory provision or other authority upon which the petition is based.

III. Argument

Cherokee is following the procedure set out in the Order. It is concurrently submitting its notification to the Commission and the other parties in this Docket that it has asserted the LEO was established on September 17, 2018, and has chosen the avoided cost rate, using the

¹ The resolution of Cherokee’s third issue is encompassed in the Commission’s determination of Issue No. 1.

methodology approved by the Commission, as of the date Cherokee established the LEO.

Cherokee will negotiate with DEC in good faith to come to an agreement on the appropriate pricing for the successor PPA, consistent with the Commission's determination that the avoided cost rates would be based upon the date of the LEO, if Cherokee makes such an election. Order, Findings of Fact Nos. 3-5; Conclusions of Law Nos. 3-4.

However, the parties may not agree with respect to an appropriate negotiated payment mechanism, or what the "avoided cost rate approved and determined by the Commission which existed" was on September 17, 2018 (the date Cherokee established its LEO). In the event Cherokee and DEC are unable to reach agreement with regard to the avoided cost rate, Cherokee files this Petition requesting that the Commission grant rehearing or reconsideration, and determine that in light of the substantial testimony and related calculations submitted by Cherokee through its testimony and evidence in this proceeding, "the avoided cost rate for this facility shall be the \$110 per kW amount, though if start up costs are reimbursed separately, as they are in the 2012 Agreement, the rate would be \$90 per kW-year." *See Cherokee Proposed Order*, page 32 and related record testimony and calculations therein at pp. 29-33.

First, such a determination is appropriate because its avoided cost calculation is the *only* calculation in the record of both an avoided cost capacity and energy rate calculated as of the date of the LEO. Second, such calculated avoided cost rate, including the avoided capacity rate proposed by Cherokee witness Mr. Strunk, comports with this Commission's Order No. 2016-349: the avoided cost order approved by this Commission at the time the LEO was created. Third, the avoided energy rate calculated as of the date of the LEO by Mr. Strunk was virtually the same as the avoided energy rates provided by DEC in their October 31, 2018 avoided energy rate schedules. It was only after the hearing that DEC attempted to introduce a much lower

energy rate (\$9 per kW-year lower than Duke's own October 2018 calculations), that is completely unsupported by any filed Duke testimony. Fourth, such avoided cost rate would represent a rate that is 24% lower than the avoided cost rate calculated by Cherokee using the September 2018 avoided cost energy prices, fuel prices and Cherokee dispatch parameters provided by DEC.

The Duke Companies' Late-Filed exhibit indicates that Duke disagrees with Cherokee's quantification of the September 17, 2018 avoided costs, and is the first time that the Duke Companies attempted to justify a much lower energy rate than DEC itself proposed in October 2018. In limited reply to Duke's new evidence, Cherokee submitted responsive evidence that the avoided costs presented in its initial testimony were conservative. Indeed, Cherokee's modeling confirms that incorporating Cherokee's dispatchability—completely ignored in the DEC October 31, 2018 rate sheet--would result in Cherokee's avoided cost value being \$119/kW-year, exclusive of start costs. *See* "Cherokee Comments on Duke Late-Filed Exhibit, p. 2 (August 12, 2021). Cherokee's Proposed Order also addressed the flaws in the Duke Companies' assertions regarding avoided cost rates, including in their post-hearing, Late Filed exhibit. *See* Proposed Order, pp. 38-49 and record testimony and evidence referenced therein.

Accordingly, Cherokee seeks limited reconsideration or rehearing of the Order, requests that the Commission, in light of the substantial testimony and evidence introduced by Cherokee in this proceeding, confirm that DEC's avoided costs, including energy and capacity components, calculated as of September 17, 2018 shall be the \$110 per kW-year rate as calculated by Cherokee witness Strunk (or \$90 per kW-year exclusive of start up costs), and grant such other relief as is just and proper.

Respectfully submitted,

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September 7, 2021